



POLICY TITLE: Submission of Accurate Information to Government Payers – False Claims Act

Responsible Department: Audit and Compliance

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SUMMARY & PURPOSE:

The purpose of this policy is to provide information regarding (1) the Federal False Claims Act (“FCA”) and the Florida False Claims Acts (collectively, the “Acts”), (2) protections for individuals who in good faith report under such laws, (3) related administrative remedies, and (4) Baptist Health South Florida’s (“BHSF’s”) commitment to detecting and preventing fraud, waste and abuse in federal and state health care programs. The requirements set forth in this policy are intended to satisfy Section 6032 of the Deficit Reduction Act of 2005.

POLICY:

BHSF is committed to complying with all applicable federal and state laws, including laws prohibiting the submission of false claims. BHSF has established a number of policies and procedures as part of its commitment to promote such compliance. Pursuant to BHSF’s commitment to comply with the Acts, and consistent with BHSF’s relevant policies, including but not limited to those listed below, BHSF makes information available to its employees, contractors and agents regarding the Acts, employee reporting protections under such laws, related administrative remedies, and BHSF’s commitment to detecting and preventing fraud, waste and abuse in federal and state health care programs.

SCOPE/APPLICABILITY:

This policy applies to BHSF and all its affiliates.

PROCEDURES TO ENSURE COMPLIANCE:

Accordingly, through this policy, BHSF provides the following information to its employees, agents and contractors:

1. Federal False Claims Act:
 - a. Prohibited Conduct:

The federal FCA is a law aimed at preventing fraud against the government, including fraudulent billing and fraudulent submission of claims to any Federal health care program (e.g., Medicare and Medicaid). Specifically, the FCA prohibits any person or entity (including hospitals, nursing homes and physicians) from:

- i. Knowingly presenting, or causing to be presented, to the Government a false or fraudulent claim for payment or approval;
- ii. Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
- iii. Conspiring to defraud the Government by getting a false or fraudulent claim allowed or paid;
- iv. Falsely certifying the type or amount of property to be used by the Government;
- v. Certifying receipt of property used (or to be used) by the Government on a document without completely knowing that the information is true;
- vi. Knowingly buying or receiving Government property from an unauthorized agent; and
- vii. Knowingly making, using or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

For health care providers, the FCA most directly applies when a false claim for reimbursement is submitted and the provider knew or should have known the information or certification on the claim was false.

b. Essential Elements of the FCA:

To successfully establish a cause of action under the FCA, the government must prove the following elements:

- i. Level of Intent: The entity or individual committing the prohibited act must do so “knowingly”. Knowingly means the person:
 - 1) Has actual knowledge of the information;
 - 2) Acts in deliberate ignorance of the truth or falsity of the information; or
 - 3) Acts in reckless disregard of the truth or falsity of the information.
- ii. Claim: There must be a false “claim” submitted to the federal government. A claim includes any request or demand for money or property that is made to a contractor, grantee, or other recipient if the Government provides any portion of the money or property that is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
- iii. Damages: The Government must suffer identifiable damages.
- iv. Penalties: Available sanctions for FCA violations include penalties of \$5,500 to \$11,000 per false claim and, depending on the circumstances, up to three times the amount of the damages. Damages can be mitigated by defendant’s cooperation, past record, and whether the violating entity made a voluntary disclosure.

c. Administrative Remedies:

The government may pursue false claims violations using the FCA or other laws and enforcement tools, including administrative remedies.

- i. Other Federal administrative laws, including the Program Fraud Civil Remedies Act and the Office of Inspector General for the United States Department of Health and Human Services’ (“OIG’s”) Civil Monetary Penalties Law, allow for similar penalties and may be used in lieu of the federal FCA.
- ii. The OIG may also seek to exclude an entity or person from participating in federal health care programs for conduct that violated the FCA.

2. Florida False Claims Acts. Florida has a state FCA that is very similar to the federal FCA. Actions and events that trigger penalties under the Florida FCA are akin to those that trigger penalties under the federal FCA. In addition to the Florida FCA, Florida has a number of other false claims statutes aimed at preventing fraud and abuse for many of Florida’s agencies and departments, including the Florida Medicaid Program. Like the Acts, these laws also prohibit filing false or fraudulent claims or documentation in an effort to improperly receive compensation from the State. Additionally, Florida also has a number of state laws prohibiting illegal referral relationships (e.g., kickbacks).

3. Non-Retaliation. In accordance with federal and state law, any employee, who in good faith, reports suspected violations under the Acts or related laws cannot be discharged, demoted, suspended, threatened, harassed or

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discriminated against by his or her employer based on lawful acts done by the employee in furtherance of an action under the laws. For additional information regarding BHSF's policies and procedures regarding non-retaliation, see BHSF Policy 822, Non-Retaliation for Reporting Potential or Actual Violations of the Code of Ethics.

4. Detecting and Preventing Fraud, Waste and Abuse. BHSF has an established health care compliance program that includes regular education, an employee hotline, written policies and procedures, regular audits and reviews. Many of BHSF's existing policies, including those listed in this policy, specifically address BHSF's ongoing efforts to detect and prevent fraud, waste and abuse in federal and state health care programs.

SUPPORTING/REFERENCE DOCUMENTATION:

31 U.S.C. § 3729-3799; 31 U.S.C. § 38; 42 U.S.C. § 1395A(A); Public Law 109-171 § 6032 (Feb. 8, 2006); Fla. Stat. §§ 68.801, Et Seq.; Fla. Stat. § 112. 3187; Fla. Stat. §§ 409.920, 409.9201, 409.913, 775.082 and Fla. Admin. Code Ann R. 59G-9.070; and Fla. Stat. §§ 414.39, 817.155 and 837.06

RELATED POLICIES, PROCEDURES, AND ASSOCIATED FORMS:

- BHSF Departmental Policy: 74730-802 Quality Program Assessments – Audit and Compliance
- BHSF Departmental Policy: 74730-803 Risk Assessment Methodology – Audit and Compliance
- BHSF Administrative Policy: 806 Distribution of Audit Reports – Audit and Compliance
- BHSF Administrative Policy: 807 Compliance Audits and Investigations – Audit and Compliance
- BHSF Administrative Policy: 811 Management's Response to Audit Findings – Audit and Compliance
- BHSF Administrative Policy: 812 Follow Up Audits to Management's Action Plan – Audit and Compliance
- BHSF Administrative Policy: 819 Code of Ethics – Audit and Compliance
- BHSF Administrative Policy: 820 Appropriate Discipline for Compliance Program Violations – Audit and Compliance
- BHSF Departmental Policy: 74730-821 Audit and Compliance Policies and Procedures – Audit and Compliance
- BHSF Administrative Policy: 822 Non-Retaliation for Reporting Potential Violations or Actual Violations of the Code of Ethics – Audit and Compliance
- BHSF Administrative Policy: 823 Compliance Hotline – Audit and Compliance
- BHSF Administrative Policy: 824 Review and Resolution of Accounts with Potential Billing Discrepancies – Audit and Compliance
- BHSF Administrative Policy: 825 Compliance Training – Audit and Compliance
- BHSF Departmental Policy: 74730-826 Communicating Compliance Program Standards – Audit and Compliance
- BHSF Administrative Policy: 845 Compliance with Regulations Governing Third Party Billing – Audit and Compliance
- BHSF Administrative Policy: 850 Appropriate Routing of Requests for Information and Notifications of Billing Discrepancies by Federally Funded Programs – Audit and Compliance

ENFORCEMENT & SANCTIONS:

Enforcement of this policy is the responsibility of Baptist Health South Florida's Audit and Compliance Department. Failure to comply with or report a violation of a compliance program policy can lead to disciplinary action up to and including termination.